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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 09/620,520 | 07/20/2000 | Dorothy B. Franks | GEMS:0091 | 2920 |

7590 09/14/2006
Patrick S Yoder
Suite 330
7915 FM 1960 West
Houston, TX 77070

EXAMINER

MOSSER, KATHLEEN MICHELE

| ART UNIT | PAPER NUMBER |
|----------|--------------|
|----------|--------------|

3715

DATE MAILED: 09/14/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

| | | | |
|------------------------------|-----------------|---------------|--|
| Office Action Summary | Application No. | Applicant(s) | |
| | 09/620,520 | FRANKS ET AL. | |
| | Examiner | Art Unit | |
| | Kathleen Mosser | 3715 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 07/03/06.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-7 and 9-28 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-7 and 9-28 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

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DETAILED ACTION

In response to the amendment filed 07/03/2006; claim 8 has been cancelled; claims 1-7 and 9-28 are pending.

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

1. Claims 1-28 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. Claim 1 includes the limitation "analyzing the operation data to identify at least one operational parameter affected by operator activities with the equipment component". Similar limitations occur in each of independent claims 15, 23 and 28, and are incorporated into the dependent claims through their dependencies. The specification fails to teach how the operational parameters can be used to make such identifications. Although the specification mentions several operational parameters that may be used in the analysis, it does not show what types of operators activities may cause an effect on these parameters or how the analysis is to actually be performed. Deriving such algorithms and determining how each parameter is affected by operators' activities would require undue experimentation on the part of one of ordinary skill in the art. Further, claim 5 recites that the data is representative of individual operators utilizing the equipment components. The specification makes no mention as to how the specific user of a piece of biomedical equipment is tracked or determined.

Response to Arguments

2. The previous rejections under 35 USC §101 and §112, second paragraph are withdrawn in view of the amendments and/or cancellation of the respective claims.

3. Applicant's arguments filed 07/03/2005 have been fully considered but they are not persuasive. Applicant's arguments concerning this feature begin on page 13 of the response. Applicant makes several references to the specification to show where data from institutions may be compared to benchmark data, or data from other institutions. However, the only citation referenced, which refers to the analysis of data for the identification of training needs, is found in page 14 line 23 – page 15 line 11. This section reads:

"A further type of processing which may be facilitated by the present technique is directed to identifying potential training needs based upon utilization of the biomedical equipment components. Fig. 9 represents steps in exemplary control logic for carrying out this processing, as indicated generally by reference numeral 180. The processing begins at step 182 where data for the components is accessed from the centralized database. At step 184, the data is analyzed to identify factors which may be indicative of a need for staff training. By way of example, such factors may include logged errors, downtimes, service or procedural inquiries, and so forth. In addition to identification of the particular components and training-indicative parameters, the data may also be analyzed to identify specific operators or users who may benefit from additional training. At step 186 the data is associated to identify the training needs by factors such as the equipment manufacturer, the component type, the department, the facility site, and so forth. Based upon the analysis made at steps 184 and 186, training needs are identified at step 188, and a report reflecting possible needs is generated at step 190. Again, the report generated at step 190, which may be generated in accordance with Fig. 5, may indicate specific training needs for specific equipment or equipment types, and may identify specific departments, sites, groups, or even specific users which may benefit from the training. As an optional step, actual training may be scheduled as indicated at step 192."

In this section it is taught that data may be analyzed for factors "which may be indicative of a need for staff training" and the examples of such factors include "logged errors, downtimes, service and procedural

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inquiries". This citation does not show how the data is analyzed, correlated or used to identify "at least one operational parameter affected by operator activities with the equipment component", as is recited in the claim. Or how such an identification is then used to determine a training need based on the analyzed data. It is unclear how data relating to logged errors, downtimes, and service and procedural inquiries equity to use parameters affected by operator activities with the equipment component, when related to the use of biomedical equipment. In applicant's hypothetical example, the determination that a user may need training on methods not to be performed on a CD-Rom drive requires more data than is presented above. Although a device may be frequently replaced, absent specific repair logs stating the reason for the replacement the determination as to the proper training cannot be made. The examiner maintains that one of ordinary skill in the art would not be able to make and use the invention without undue experimentation.

The examiner further notes that applicant provided no citation or arguments which teach where the limitation of claim 5 were supported by the specification. Although the above citation states that such a determination is possible, it does not teach how the determination can be made.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

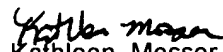
A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kathleen Mosser whose telephone number is (571) 272-4435. The examiner can normally be reached on M-F 8:00-4:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert Olszewski can be reached on (571) 272-6788. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


Kathleen Mosser
Primary Examiner
Art Unit 3715

September 5, 2006